Supreme Court, U.S.
FILED

001490 MAR 22 2001

OFFICE OF THE CLERK

No:

IN THE
SUPREME COURT OF THE UNITED STATES

GREGORY C. BRUNDAGE,

PETITIONER,

V.

UNITED STATE INFORMATION AGENCY,
U.S.I.A. OFFICER STANLEY HARSHA,
U.S. DEPARTMENT OF STATE,
CENTRAL INTELLIGENCE AGENCY and
WILLIAM JEFFERSON CLINTON

DEFENDANTS.

On Petition for Writ of Certiorari
To the Seventh Circuit Court of Appeals
(7th Circuit Docket Number: 00-3124)

PETITION FOR WRIT OF CERTIORARI

Petitioner:
Gregory C. Brundage
Pro Se
712 E. Knapp St. #311
Milwaukee, WI 53202
(414) 416-8881

Attorneys for Defendants:
Thomas P. Schneider
U.S. Attorney
Paul L. Kanter
Assistant U.S. Attorney
517 E. Wisconsin Ave.
Milwaukee, WI 53202
(414) 297-1700

Rule 14.1.(a) Appellant's questions presented for review are:

1. Is it permissible within the laws of the United States of America, specifically the liberty clause of the 14th Amendment, for an American President to sell American children to foreign leaders for the purpose of gaining campaign finance or the promise of influence to obtain it?

2. When decisions rendered by District and Appeals Court Judges are adopted wholesale from the pleadings of the attorneys for the defense, including claims attributed to the Appellant which were not pleaded by the Appellant (i.e. FTCA claims) does this indicate that the decisions by those judges were not independent decisions based upon facts or the law?

3. Given that soliciting for campaign funds is not the official duty of a President why was the United States Attorney, a federal officer, defending then President Clinton in Federal and Circuit Courts?

4. Given the massive quantity of dual-use technology that President Clinton sold to China, Russia and India, is it so unlikely or even improbable that he also tossed in a couple of half-American children as part of any one of those deals, especially given that Chinese and Indians were the first beneficiaries of the Plaintiff's family after he was thrown out of Malaysia?

5. If it is still true that "all men are created equal" and this remains as the first principal of law in our constitutional government, how could attorneys for then President Clinton claim "absolute sovereign immunity" as a defense against the charges by Plaintiff in this action?

TABLE OF CONTENTS

Appellant's Questions presented for Review..... i
Table of Contents and Authorities..... ii
Rule 14.1(d) Reports of opinions delivered in the case by other courts..... 1
Rule 14.1 (e) Grounds upon which jurisdiction of this Court is invoked..... 1
Rule 14.1 (f) Constitutional Provisions..... 2
Rule 14.1 (g) Concise statement of the facts material to consideration of questions involved... 2
Rule 14.1 (i) Basis for Federal Jurisdiction..... 4
Rule 14.1 (j) Reasons relied on for the allowance of the writ..... 4
Rule 14.1.(k) Description of Appendix..... 8
Rule 14.2 Conformity with Rule 33..... 9
Rule 14.3 All contentions within Writ..... 9

TABLE OF AUTHORITIES

1. 28 U.S.C. § 2101(e) "imperative public importance" (campagin finance reform) per Supreme Court Rule 11..... 1
2. Constitutional Provisions – Amendments 1 & 14..... 2
3. West's Federal Practice Digest 4th Volume 113, Words and Phrases (113 FPD 407) cites FRCP Rule 52(a) 28 U.S.C.A. which in Note 2, Construction with Statutory Provisions refers to need for separate Findings of Fact and Conclusions of Law..... 5
4. *Bagola v. Kindt*, 131, F3d 638 (7th Cir. 1997)..... 6
5. *FDIC v. Meyer*, 510 U.S. 471, 485..... 6
6. *Carlson v. Green*, 446 U.S. at 14, 21, 1980.... 6
7. *Paul v. Davis*, 424 U.S. 717..... 7
8. *United States v. Classic* 313 U.S. 299, 326 (1941)..... 7
9. *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 US 388 (1970)..... 8

Rule 14.1.(d) Official and unofficial reports of opinions delivered in the case by other Courts.

1. United States District Judge Thomas Curran ordered that this case be dismissed with prejudice August 1, 2000.
2. Seventh Circuit Judges John L. Coffee, Daniel A. Manion, and Diane P. Wood ordered to affirm the judgement of the District Court December 27, 2000.

Rule 14.1.(e) Grounds upon which the jurisdiction of this Court is invoked.

(i) Seventh Circuit Court of Appeals Order dismissing action December 27, 2000

(ii) A rehearing has not been requested, nor has an extension of time for filing petition for a writ of certiorari

(iii) No cross petition has been filed to date

(iv) The Statutory provision believed to confer on this Court jurisdiction to review the judgement or decree in question by writ of certiorari:

- 28 U.S.C. § 2101(e) This action proves the "imperative public importance" of campaign finance reform, as per Supreme Court Rule 11. Also, the Petitioner's children's lives are in danger.

Rule 14.1.(f) Constitutional provisions, treaties, statutes, ordinances and regulations involved in this case, set Verbatim and giving the appropriate citation therefor:

> Constitutional Provisions:
> Amendment 1: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
>
> Amendment 14: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rule 14.1.(g): A concise statement of the case containing the facts material to the consideration of the questions presented.

> Appellant was a journalist working in Malaysia and published articles about the war in Kashmir in Malaysia's largest daily broadsheet English language newspaper in January, 1994, citing Russia as helping India in brutal occupation of Kashmir, in spite of Plebiscites granted by the United Nations after WWII. Prime Ministers of India and Malaysia flew over

and met with President Clinton for the first time in May, 1994. Simultaneously the Russians bought Harold Nicholson, highest-ranking CIA officer ever in history convicted for espionage, in India while he was stationed in Malaysia. Then, U.S. Embassy/State Department/USIA officer Stanley Harsha set Appellant up with a specific Indian Malaysian reporter (December 1994) who was very highly motivated to sabotage the Appellant, and subsequently published a highly defamatory story (July 19, 1995) with false quotes a) attacking the psychological stability of the Appellant and b) insulting the Malaysian Department of Immigration. Also in late 1994, R. P. Hanssen (the longest lasting Russian agent in the F.B.I.) served briefly in the office of the F.B.I.'s office of the assistant director for national security, and in February 1995 he was reassigned as the FBI representative to the State Department. Thus, Plaintiff had both the highest ranking CIA officer ever in history bought by the Russians stationed in the same embassy, and the F.B.I. representative to the State Department and assistant director for national security covertly working for the Russians at the same time he was sabotaged by another U.S. Embassy employee, after he had published articles stating Russia was helping India in it's genocidal war in Kashmir.

Plaintiff has also supplied Affidavits to the court stating that his uncle, the late Col. Irving McDonald, was an American spy working for the Air Force who was thrown out of Russia for espionage in 1961. Parents of Plaintiff subsequently signed said Affidavits. Appellant was then fired from jobs and Malaysian

Immigration refused to renew Appellant's Visa turning his then Malaysian wife's family against him and forcing him to leave the country without his family. Appellant returned to the U.S. only to find that immigrants from India are the largest foreign donors to American politicians and they also got unregulated nuclear technology from then President Clinton in 1995.

In sum, Appellant (via stories he published) angered two Prime Ministers in South Asia, who flew over and talked to President Clinton who was reckless in his desire to obtain campaign finance, and then U.S. Embassy employee caused the Plaintiff to be put out of business and thrown out of the country in a very cruel and unusual way. Simultaneously, Plaintiff angered Russians (via stories he published) who subverted two very powerful key U.S. Intelligence officers, (Nicholson & Hanssen) giving them motivation to assist in this process.

Rule 14.1.(i) Basis for Federal Jurisdiction in initial action.

This action (*Brundage v. Harsha, et. al.*) is based upon Constitutional provisions, and cites U..S. Agencies and Officers as Defendants.

Rule 14.1.(j) Reasons relied on for the allowance of the writ.

1) Petitioner's complaint states a federal cause of action under the 14th Amendment for which damages are recoverable upon proof of injuries resulting from the federal agents' violation of that Amendment.

2) American journalist overseas and his family were clearly not safe from agents of the CIA.

3) Foreigners should not be allowed to buy American politicians, their policies and agents, overt and/or covert.

4) West's Federal Practice Digest 4th Volume 113, Words and Phrases (113 FPD 407) cites FRCP Rule 52(a) 28 U.S.C.A. which in Note 2, Construction with Statutory Provisions asserts:

> "Where order dismissing proceedings for agricultural composition upon motion of creditors of alleged farmer-debtor did not state, and... district court made no finding of fact and stated no conclusions of law, order would be reversed and case remanded to district court with directions to find the facts separately, state separately its conclusions of law thereon and direct entry of the appropriate judgement in conformity with this rule." (Rule 52, Note 2, Page 83)

To date, Plaintiff has received only orders dismissing case from District and Appeal courts, not separate findings of fact and conclusions of law.

5) As per West's Federal Practice Digest, 3rd Vol. 50, 848:
C.A. Cal. 1978 "While fact that trial judge adopted proposed findings of prevailing party does not, by itself warrant reversal on appeal, it raises possibility that there was insufficient independent evaluation of the

evidence and may cause losing party to believe that his position has not been given consideration it deserves; such concerns may require more careful scrutiny of adopted findings." This case cites (3) Federal Civil Procedure 2280 which states: "Wholesale adopting prevailing party's proposed findings complicates problems of appellate review." (Page 773)

In fact, Appellant never cited FTCA as grounds for action, only *Bivens*, however, Judges in both district and appeals courts utilized Plaintiff's "failure" to meet FTCA requirements as grounds for Dismissal, proving that a wholesale adopting of defendants' claims did occur.

"Id. At 20, 100 S.Ct. at 1472 (second and third alterations in original) quoting S.Rep. No 93-558 at 3(1973). 'Finding no indication that Congress intended the FTCA remedy to replace the *Bivens* remedy, the Court held that prisoners who were victims of the kind of intentional wrongdoing as alleged in this complaint shall have an action under FTCA against the United States as well as a *Bivens* action against the individual officials alleged to have infringed their Constitutional rights.'" *Bagola v. Kindt*, 131, F3d 638 (7th Cir. 1997)

"It must be remembered that the purpose of *Bivens* is to deter the officer. See *Carlson v. Green*, 446 U.S. at 14, 21 (1980) (Because the *Bivens* remedy is recoverable against individuals, it is a more effective deterrent than the FTCA remedy against the United

States"). *FDIC v. Meyer*, 510 U.S. 471, 485 (1993) 100 S.Ct. at 1472-73, this factor weighs heavily on our analysis under Carlson." *Bagola v. Kindt* 131 F3d 639 (7th Cir. 1997)

In *Paul v. Davis* it states that: (III) "It is apparent from our decisions that there exists a variety of interests which are difficult by definition but are nevertheless comprehended within the meaning of either 'liberty or property' as means in the 'Due Process Clause,' clearly establishing an a priori Appeals Court basis for cause of action."

In the words of Justice Brennan in *Paul v. Davis* 424 U.S. 717, "an official's actions are not 'under color of' law merely because he is an official... the essential element in this type of Section 1983 action is *abuse of his official position* (*Monroe v. Pape*, Supra at 172)... Sec. 1983 focuses on misuse of power, possessed by virtue of state law and *made possible only because the wrongdoer is clothed with the authority of state law.*" *United States v. Classic* 313 U.S. 299, 326 (1941) (emphasis supplied)."

6) "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, wherever he receives an injury..." Judge Harlan, concurring in judgement, wrote that "for the reasons set forth below, I am of the opinion that federal courts do have the power to award damages for violation of constitutionally protected interests and I

agree with the Court that a traditional judiciary remedy such as damages is appropriate to the vindication of the personal interests protected by the Fourth Amendment." *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 US 388 (1970)

7. This Petition for writ of Certiorari is an affirmation of the natural right of a man to have a family, free of government interference.

   "Does his majesty seriously wish, and publish to the world that his subjects should give up the glorious right of representation and submit themselves the absolute slaves of his sovereign will?" From "Summary View" by Thomas Jefferson.

8. The fact that there are 95 members of the American Congress that belong to the "Indian Congressional Caucus" suggests that the Petitioner's "representation" has been usurped by the artful deceit of an illegal foreign association.

   Thomas Jefferson also believed that resistance to corruption might be manifested in resistance even to popular governments.

Rule 14.1.(k) The Appendix herein attached contains:

i) Orders of District and Appeals Courts (See APPENDIX)

ii) There are no (other) opinions, orders, findings of fact and conclusions of law

rendered in this case by courts or administrative agencies.

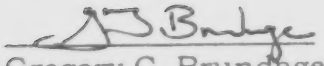
iii) There are no orders on rehearing.

iv) The only judgements sought to be reviewed are listed above, 14.1(d) presented as APPENDIX.

v) The herein above referred to Orders are not voluminous.

Rule 14.2 This petition is in conformity with Rule 33.

Rule 14.3 All contentions in support of a writ of certiorari are within the body of this petition.



3/21/01

Gregory C. Brundage
Appellant Pro Se
712 E. Knapp St. #311
Milwaukee, WI 53202

Date

APPENDIX

TO

Brundage v. Harsha, et. al.

Hereinbelow please find retyped copy of Orders by Federal and Appeals Court judges in this action, reformatted to fit the page size specifications required by this Court. Fonts and line spacing were copied as faithfully as possible.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

GREGORY C. BRUNDAGE
a/a/a/ Rashid Brundage
a/k/a/ Greg Abdul Rashid

Plaintiff Case No. 99-C-1222

v.

[File Stamped: 8/1/2000]

U.S.I.S. INFORMATION OFFICER
STANLEY J. HARSHA, UNITED STATES
INFORMATION SERVICE,
STATE DEPARTMENT OF THE UNITED
STATES CENTRAL INTELLIGENCE AGENCY
PRESIDENT WILLIAM JEFFERSON CLINTON

Defendants.

ORDER

Having reviewed the brief and other papers of the parties, the court ORDERS that the "Plaintiff's Motion to Admit Additional Complaints Past May 1, 2000 Deadline" (Filed May 3, 2000 IS DENIED. The motion is untimely under the court's Scheduling Order of March 31, 2000, and no good cause for extending the deadline for amending the pleadings has been demonstrated by the Plaintiff.

IT IS FURTHER ORDERED That the "Defendant Federal Agencies' Motion to Dismiss" (Filed May 15, 200) IS GRANTED. The Complaint does not comply with Federal Rule of Civil Procedure 8. The Complaint is not a short or plain statement of the grounds for relief and the Plaintiff's proposed amendments would not rectify this deficiency. The claims against the federal agencies do not comply with the Federal Tort Claims Act's Time restrictions. See 28 U.S.C. § 2401(b). The claims against the federal officials do not state a claim for constitutional tort remedies under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). And, President William Clinton is immune from liability for damages predicated upon his official acts. See *Nixon v. Fitzgerald*, 457 U.S. 731 (1982).

IT IS FURTHER ORDERED that this action is DISMISSED with prejudice. Federal Rule of Civil Procedure 12(b)(3) & (b)(6).

IT IS FURTHER ORDERED that the Clerk of Court shall enter a final judgement of dismissal as a separate document. See Federal

Rule of Civil Procedure 58. This judgement shall provide that:

> This action brought by Plaintiff Gregory C. Brundage against Defendants U.S.I.S. Information Officer Stanley J. Harsha, United States Information Service, State Department of the United States Central Intelligence Agency, and President William J. Clinton came on for hearing before the Court, the Honorable Thomas J. Curran, District Judge, presiding and the issues having been heard and a decision having been rendered.
>
> IT IS ORDERED AND ADJUDGED
>
> That Plaintiff Gregory C. Brundage take nothing and that this action is dismissed upon its merits and that Defendants U.S.I.S. Information Officer Stanley J. Harsha, United States Information Service, State Department of the United States Central Intelligence Agency, and President William J. Clinton recover of the Plaintiff their costs of this action.

Done and Ordered in Chambers at the United States Courthouse Milwaukee, Wisconsin, this 1st day of August, 2000.

/s/ Thomas J. Curran

Thomas J. Curran

U.S. District Judge

AO 450 (Rev. 5/85 Judgement in a Civil Case

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JUDGEMENT IN A CIVIL CASE

GREGORY C. BRUNDAGE
a/k/a/ Rashid Brundage
a/k/a/ Greg Abdul Rashid

CASE NUMBER: 99-C-1222
v. [File stamped 8-1-2000]

U.S.I.S. INFORMATION OFFICER
STANLEY J. HARSHA, et. al.

[ ] Jury verdict.
[X] Decision by Court.

IT IS ORDERED AND ADJUDGED that Plaintiff Gregory C. Brundage take nothing and that this action is dismissed upon its merits and that Defendants U.S.I.S. Information Officer Stanley J. Harsha, United States Information Service, State Department of the United States Central Intelligence Agency, and President William J. Clinton recover of the Plaintiff their costs of this action.

Dated August 1, 2000 Safron B. Nedilsky, Clerk

/s/ D. McLeod
(By) Deputy Clerk

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 19, 2000*
Decided December 27, 2000

Before

Hon. JOHN L. COFFEE, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

Hon. DIANE P. WOOD, Circuit Judge

No. 00-3124

GREGORY C. BRUNDAGE,
Plaintiff-Appellant,

v.

UNITED STATES INFORMATION AGENCY, et at.,
Defendants-Appellants.

Appeal from the U.S. District Court for the Eastern District Of Wisconsin
No. 99—C-1222

Thomas J. Curran
Judge

ORDER

Gregory Brundage filed a *pro se* complaint seeking to allege defamation under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680, and constitutional tort claims under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), against the United States Information Agency (USIA), (1) the Central Intelligence Agency (CIA), the United States Department of State, and, in their

---

*After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* Fed. R. App. P. 34(a)(2).

1 The Complaint names as defendant the "United States Information Service." The correct name, however, is the United States Information Agency, see 22 U.S.C. §§ 1461, 1461-1, whose name, we now substitute in the caption. See Cir. R. 43(c)(2). We note, however, that subsequent to the events described in the complaint, Congress abolished the USIA and transferred its functions to the Secretary of State. *See* 22 U.S.C. §§ 6531, 6532.

official capacities, USIA officer Stanley Harsha and President William J. Clinton. On August 1, 2000, the district court denied Brundage's motion for leave to file additional complaints and granted the defendants motion to dismiss the complaint with prejudice. Brundage appeals and we affirm the judgement of the district court.

We review de novo the grant of the motion to dismiss. See *Home Valu, Inc. v. Pep Boys*, 213 F.3d 960, 963 (7th Cir. 2000). In a 20-page complaint accompanied by 68 exhibits, Brundage alleges the following facts, which we accept as true and construe in his favor. *See id.* Between 1992 and November 1995, Brundage, a United States citizen, lived in Kuala Lumpur, Malaysia, with his wife and children who are Malaysian citizens. He worked in various occupations including as a freelance writer, occasionally writing under the name Greg Abdul Rashid. Among the articles he wrote were several about the conflict in Kashmir between India and Pakistan and a piece entitled "Plight of the Legal Immigrant," published in *The Star*, a Malaysian newspaper.

Brundage's problems began in December 1994 when defendant Harsha called him on the telephone. Brundage does not describe the contents of their conversation, but at some point thereafter, Harsha provided Brundage's telephone number to Daniel Peter, a reporter for The Star. Brundage then voluntarily agreed to be interviewed by Peter, who was writing a story about Malaysian immigration laws. Peter's

article, which was published in *The Star* on July 19, 1995 quoted Brundage as saying that he was "unhappy with life" in Malaysia due to his difficulties finding employment and that as a result he had become "psychologically broken and mentally unstable."

Brundage claims that he never made those statements to Peter. Believing the article to be defamatory, he promptly demanded a retraction or correction from *The Star's* editors, who refused but promised they would not reprint the article or publish similar statements about him in the future. Brundage then considered but did not take legal action in Malaysia. In November, 1995, Brundage was expelled from Malaysia after his visa was not renewed. He then returned to live in Wisconsin without his wife and children.

The alleged impetus for the conspiracy against Brundage was President Clinton's fund-raising for his 1996 reelection campaign. During that effort, the President received funds from the Indian community and met with the Prime Ministers of India and Malaysia during their visits to the Untied States in May 1994. In the remainder of the complaint, Brundage theorizes a conspiratorial scheme implicating all of the defendants: President Clinton, in exchange for campaign contributions from India and Malaysia agreed to enlist the CIA, the State Department and Harsha to arrange the Peter interview that resulted in the defamatory article and Brundage's loss of his job, expulsion from Malaysia and

separation from his wife and children, thereby accomplishing the Prime Ministers' objective of removing Brundage from Malaysia for writing articles sympathetic to the Kashmiri people and critical of Malaysian immigration laws.

Brundage filed this complaint on October 18, 1999, nearly four years after his expulsion from Malaysia, demanding $600,000,001.00 in damages. Although the district court imposed a May 1, 2000 deadline for filing an amended complaint, on May 6 Brundage filed a self-styled "motion to admit additional complaints," claiming that the assistant United States Attorney representing defendants was not cooperating in discovery. Brundage attached to his motion a rambling recitation of CIA activities in Asia that, presumably, he believes contributed to his expulsion from Malaysia.

On August 1, 2000, the district court denied Brundage's motion on the grounds that it was untimely, did not show good cause for extending the previously-set deadline for amended pleadings, and in any event did not cure the deficiencies that the defendants pointed out in their motion to dismiss. The court then dismissed the complaint with prejudice, holding that the complaint did not constitute a short and plain statement of the grounds for relief, the FTCA claims were time-barred, the *Bivens* claims did not allege constitutional violations, and the doctrine of absolute immunity barred a suit against President Clinton predicated on his official acts. Brundage filed a timely notice of appeal.

A Complaint should be dismissed for failure to state a claim only if "no other relief could be granted 'under any set of facts that could be proved consistent with the allegation'" *Nance v. Vieregge*, 147 F.3d 589, 590 (7th Cir.)(quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)), *cert. denied*, 525 U.S. 973 (1998). In addition, as Brundage is proceeding pro se, his complaint must be liberally construed. See *Hudson V. McHugh*, 148 F.3d 859, 864 (7th Cir. 1998). We agree with the district court's interpretation of Brundage's claims as arising under the FTCA and *Bivens*. (2)

---

2 In his "Allegation of Jurisdiction," Brundage styled his claims as rising under the First, Fourth and Eighth Amendments and 42 U.S.C. §§ 1981, 1983, 1985 and 2458(a). Although the district court did not address these claims directly, none provide him with a basis for relief under the facts alleged in the complaint. The defendants are not state actors, thus precluding any claim under §1981 or §1983. Because the acts complained of and the alleged injuries occurred in Malaysia, Section 1985 – which prohibits conspiracies to violate civil rights occurring "in a State or Territory" – does not provide an avenue of relief. Nor does Brundage allege that he received medical care from any of the defendants and thus he cannot state a medical malpractice claim under §2458a.

The district court did not err in concluding that the FTCA claims, which appear to allege that the CIA and the USIA defamed Brundage, were barred by his failure to present the claims in writing to the agencies prior to November 1997 – within two years of the accrual of his claim (i.e. at the latest, his expulsion from Malaysia in November 1995). See 28 U.S.C. §§2401(b), 2675; see *also McNiel v. United States*, 508 U.S. 106 111-13 (1993)(exhaustion of administrative remedies is jurisdictional prerequisite under FTCA*); Kanar v. United States*, 118 F.3527, 528 (7th Cir. 1997)(same). Brundage's FTCA claims, however, also fail on two additional jurisdictional grounds. The FTCA expressly precludes claims "arising in a foreign country," 28 U.S.C. §2680(k); see *United States v. Smith*, 499 U.S. 160, 161 (1991) (FTCA does not extend subject matter jurisdiction to governmental torts arising in foreign countries), and Brundage sustained his alleged injuries in Malaysia. In addition, the FTCA also bars suits against federal agencies for intentional torts, se 28 U.S.C. §2680(h), including defamation, see *Apampa v. Layng*, 157 F.3d 1103, 1104(7th Cir. 1998). Under any of these theories, the district court lacked subject matter jurisdiction over the FTCA claims against the federal agency defendants.

The district court also correctly held that Brundage did not adequately allege the violation of a constitutional right on which to base his *Bivens* claims against the federal official defendants. The only conduct of a federal official bearing even a remote causal connection to Brundage is Harsha's disclosure of Brundage's phone number for the reporter, Peter. Brundage cannot state a Fourth Amendment claim because he did not have a reasonable expectation of privacy with respect to his telephone number, see Smith v. Maryland, 442, U.S. 735, 742 (1997); 2121 *Arlington heights Corp. V. Internal Revenue*

Serv. 109 F.3d 1221, 1225 (7th Cir. 1997), and thus he did not have a constitutionally protected privacy right on which to base his *Bivens* claim.

See also *Kimberlin v. United States Dep't of Justice*, 788 F.2d 434, 438-39 (7th Cir. 1986). In addition, Brundage cannot state a Fifth Amendment claim because a telephone number can hardly be considered "stigmatizing" information and thus Harsha's act of providing the number to Peter did not implicate any of Brundage's liberty interests under the due process clause. See *Hannon v. Turnage*, 892 F.2d 653, 660 (7th Cir. 1990). Furthermore, a *Bivens* action may only be maintained against a federal official in his or her individual capacity; it cannot be maintained against the Untied States or a federal agency, *F.D.I.C. v. Meyer*, 510 U.S. 471, 485-86 (1994), and thus the district court properly dismissed the *Bivens* claims. CF. *Cross v. Fiscus*, 830 F.2d 755, 756 (7th Cir. 1987) (*Bivens* only authorizes suits against federal officials in their individual capacities.(3)) Finally because Brundage did not establish the violation of a constitutional right, it is not necessary to address his claim that the defendants conspired to violate his constitutional rights. See *Kimberlin*, 788 F.2d at 439.

---

(3) Although the district court correctly stated that President Clinton is immune from damages suits predicated on his official acts, we find it unnecessary to reach this issue because Brundage has failed to assert a claim on which to base a suit. See Cross, 830 F.2d at 756 (federal defenses are "unimportant" if plaintiff has first failed to allege a cognizable claim for relief).

In addition, the district court did not abuse its discretion in denying Brundage leave to amend his complaint. Although leave to amend a complaint should be freely given "when justice requires," Fed. Civ. P. 15(a), Brundage 's proposed additional complaints provided no further clarification of the legal theories on which he based his claims and therefore, repleaded would have been futile. See *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Harris v. City of Auburn* 27 F. 3d 1284 (7th Cir. 1994).

The judgement of the district court is AFFIRMED. Brundage's motion for summary judgement filed December 1, 2000 is DENIED as moot.

[End document]